



United States
Department of
Agriculture

Farmers
Home
Administration

Washington
D.C.
20250

FmHA AN No. 1587 (1980)

April 30, 1987

SUBJECT: Payment of Estimated Losses on
FmHA Guaranteed Loans During
Chapters 11, 12, and 13
Bankruptcy Proceedings

TO: All State Directors, State Directors-at-Large and
Program Chiefs, FmHA

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to give guidance for the payment of estimated losses on FmHA guaranteed Farmer Programs and Business and Industry (B&I) loans when the debtor has filed for protection and reorganization under the Bankruptcy Code. The National office is in the process of revising FmHA guaranteed loan regulations and instruments to specifically address the payment of estimated losses during bankruptcy proceedings. Appropriate approval authority will be given to field personnel in the revised regulations. Until that time, the payment of estimated losses while the debtor is reorganizing under the bankruptcy code will be handled in accordance with this AN.

COMPARISON WITH PREVIOUS AN:

There is no previous AN on this subject.

IMPLEMENTATION RESPONSIBILITIES:

The guaranteed loan instruments and regulations do not specifically address the payment of estimated losses to lenders while the debtor is reorganizing under the Bankruptcy Code. Generally, FmHA pays a lender an estimated loss on a guaranteed loan only after the lender has placed the loan in liquidation and the lender holds all or part of the guaranteed portion of the loan. FmHA will consider, on individual cases, the payment of an estimated loss to a lender while a debtor is reorganizing under Chapter 11, 12, or 13 of the Bankruptcy Code provided such requests are made in accordance with Section 1980.85, "Exception Authority," of FmHA Instruction 1980-A.

The payment of estimated losses will be considered by the Administrator at the time the Chapter 11, 12, or 13 plan of reorganization is confirmed by the Bankruptcy Court. The

EXPIRATION DATE: June 30, 1987

FILING INSTRUCTIONS:
Preceding FmHA
Instruction 1980-A



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Secretary of Agriculture, Washington, D.C. 20250

dollar amount of the estimated loss will be determined in part by the difference in value of the security property as determined by the court and the unpaid principal and interest balance owed on the guaranteed loan. Attached is a sample memorandum that may be used to submit to the National Office estimated losses on Guaranteed Farmer Programs loans. The memorandum should be forwarded in duplicate and the original will be returned indicating approval or disapproval.

A photo copy of Form FmHA 449-30, "Report of Loss," should be forwarded with your memorandum. The body of the sample memorandum may be modified to address any particular circumstances of the case.

If warranted, a revised estimated loss may be paid to a lender upon the debtor completing all payments under a Chapter 11, 12, or 13 reorganization plan. Such requests for payment of an additional estimated loss must be made in accordance with the exception authority. However, more than one estimated loss payment will not be recorded in the automated accounting system until system development to accomodate the additional loss payments is accomplished.

We are not certain if the bankruptcy courts will tell lenders how to apply estimated loss payments; lenders must follow any such direction from courts. If the bankruptcy courts give no direction as to how payments are to be applied, the lender must apply estimated loss payments first to the unsecured principal portion of the debt and then to the unsecured interest portion of the debt. In all instances, the lender must hold the guaranteed portion of the loan prior to the payment of the estimated loss.

Upon completion of the plan, FmHA will review any estimated loss payments paid, in order to determine whether the estimated loss paid equals the loss sustained. If the actual loss sustained as a result of the reorganization is greater than the estimated loss payment, FmHA will submit a revised estimated loss for issuance of a Treasury Check in payment of the additional amount owed by FmHA to the lender. If the actual loss is less than the estimated loss, the lender will reimburse FmHA for the overpayment plus interest at the note rate from the date of payment. The lender will sign an acknowledgement containing the language in this paragraph at the time an estimated loss claim is requested under the authority of this AN.



VANCE L. CLARK
Administrator

Attachment

Sent by electronic mail on 05/01/87 at 9:30 am. by
ASD/IMPS. The State Director should advise other personnel as
appropriate.

1587(1980)

Attachment

SUBJECT: Payment of Estimated Loss/Chapter 12
 John Doe - Case No. 99-99-999999999
 Anytown, Wisconsin

TO: Glenn J. Hertzler, Jr.
 Assistant Administrator
 Farmer Programs

The subject guaranteed operating (OL) loan borrower has filed for protection under Chapter 12 of the Bankruptcy Code. The borrower's reorganization plan has been approved by the bankruptcy court and the lender, the First National Bank of Anytown, Wisconsin, has requested FmHA to pay an estimated loss. In accordance with Section 1980.85, "Exception Authority," of FmHA Instruction 1980-A and Administrative Notice (AN) No. _____ (_____) dated _____, 1987, we are requesting that an estimated loss be paid to the lender. The estimated loss is based on the following:

Unpaid Principal Balance	\$100,000
Unpaid Interest Balance	10,000
Total	<u>\$110,000</u>
Less: Value of Security Property	\$ 85,000
Proposed Principal and Interest Reduction on Unsecured Portion of Debt	5,000
Other	<u>-0-</u>
Estimated Loss Amount	20,000
Percent of Guarantee	.90
Estimated Loss Multiplied by Percent of Guarantee	18,000
Less: Adjustment for Individual Circumstance of Debtor and Nature of Security	-0-
Estimated Loss Payment to Lender	<u>\$ 18,000</u>
Interest Rate _____	Percent _____
_____ Fixed _____	_____ Variabale

The current interest rate on the loan is greater than the present cost of borrowing to FmHA and by not paying the estimated loss will cause an adverse effect on maintaining a viable guaranteed loan program in Wisconsin and Nationwide. We know of no other alternatives and to delay payment of the estimated loss claim will cause additional financial liability to FmHA and/or would be contrary to fostering a positive working relationship with guaranteed lenders.

We have completed a review of the estimated loss claim and based on information available to FmHA at this time there is no evidence of fraud or misrepresentation of which lender participated in or condoned. In addition, we are not knowledgeable that any part of the loss is occasioned by violation of usury laws, negligent servicing, failure to obtain the required security or loan funds used for unauthorized purposes.

Attached is a photo copy of the subject Form FmHA 449-30, "Report of Loss." We request that you grant an exception to allow the payment of the estimated loss. Please indicate your concurrence by signing in the space below.

RONALD W. CALDWELL
State Director

Enclosure

I hereby grant the exception and concur in the payment of the estimated loss.

VANCE L. CLARK
Administrator